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FILED

DISTRICT COURT OF GUAM

OCT 17 2006

MARY L.M. MORAN
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE TERRITORY OF GUAM

TCW SPECIAL CREDITS, et al.

Plaintiffs,

v.

FISHING VESSEL CHLOE Z,
Et al.,

Defendants.

Case No. 96-00055

MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFF MATOS AND
PRANJIC'S MOTION TO ESTABLISH
PREJUDGMENT INTEREST AND POST
JUDGMENT INTEREST ON MATOS
AND PRANJIC IN REM JUDGMENTS

Plaintiffs ROBERT MATOS and SLOBODAN PRANJIC are entitled to both prejudgment interest and post-judgment interest on their amended *in rem* judgments. MATOS' judgment was rendered on February 19, 1999 and PRANJIC's judgment was rendered on January 11, 1999. Prejudgment interest is normal and customary in all *in rem* judgments unless there is some peculiar or exceptional circumstance that justifies denial. Post-judgment interest on a federal judgment is dictated by 28 U.S.C. Section 1961 which is a Congressional mandated formula for determining post judgment interest. By case law and statute, MATOS and PRANJIC, as seamen

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2 holding maritime judgments, are entitled to just compensation
3 including both prejudgment and post-judgment interest to date.
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6 I.

7 **Prejudgment interest cannot be denied unless there is a**
8 **peculiar or exceptional reason for doing so.**

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10 Since 1796 the U.S. Supreme Court has approved decisions,
11 decrees, and judgments ordering prejudgment interest to those
12 holding maritime liens. In Del Col v. Arnold, 3 U.S. (3 Dall.)
13 333, 1 L.Ed. 624. Since that time the U.S. Supreme Court has
14 consistently ordered prejudgment interest from the date of
15 injury up until the date of the decree or judgment. The
16 Manatoba, 122 U.S. 97, 7 Sup. Ct. 1158, 30 L.Ed. 1095; The Anna
17 Maria 15 U.S. (2 Wheat.) 327, 4 L.Ed. 252 (1817) More recently,
18 in the City of Milwaukee v. National Gypsum Company, 515 U.S.
19 189, 115 Sup. Ct. 2091 (1995), the U.S. Supreme Court recognized
20 the well established rule that prejudgment interest should be
21 awarded in most *in rem* cases with only a limited exception for
22 peculiar and exceptional circumstances. Justice Stevens, in The
23 City of Milwaukee, *supra*, declares that the rational for
24 awarding prejudgment interest is to ensure that an injured party
25 is fully compensated for their loss. Justice Stevens notes that
26 an award of prejudgment interest helps achieve the goal, in
27 admiralty law, of restoring a party to the condition enjoyed
28 before the injury occurred. The President Madison, 91 Fed. 2nd

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2 835; Cal. App. 9th, 1937. While the Court refuses to
3 specifically define what constitutes "peculiar and exceptional
4 circumstances" the Court, nevertheless, acknowledges in the City
5 of Milwaukee decision that neither fault of the plaintiff, nor a
6 bad faith test, constitutes sufficient criteria for establishing
7 exceptional circumstances. The Supreme Court further
8 acknowledges that the purpose of prejudgment interest is simply
9 to make the plaintiff whole, as much as possible, since the date
10 of injury. City of Milwaukee, supra. Prejudgment interest is
11 not punitive in nature, even if it amounts to \$ 1,677,541.68, as
12 was awarded in City of Milwaukee, and the interest award is
13 simply compensatory damages to which a maritime lien holder is
14 entitled unless some rare exception exists. City of Milwaukee,
15 supra.

16
17 The Supreme Court, in City of Milwaukee, supra, further
18 approves of the 9th Circuit decision in Alkmeon Naviera v. M/V
19 Marina L, 633 Fed. 2nd 789 (9th Circuit 1980), in which Justice
20 Kennedy, a current Supreme Court justice, stated in Alkmeon that
21 denying a party prejudgment interest on the basis of fault
22 "would seem to penalize the party twice for the same mistake".
23 The U.S. Supreme Court recognizes that the denial of prejudgment
24 interest works "a double penalty" that is neither commended by
25 logic nor by fairness. City of Milwaukee, supra. Justice Kennedy
26 makes it quite clear that 9th Circuit admiralty judgments
27 require prejudgment interest unless there are peculiar and
28 exceptional circumstances that compel the District Court to deny

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2 prejudgment interest.

3 The 9th Circuit Court of Appeals has consistently reversed
4 and remanded cases in which district courts have failed to award
5 prejudgment interest without finding peculiar and exceptional
6 circumstances. The 9th Circuit held in Simeonoff v. Hiner, 249
7 Fed. 3rd 883 (2001), that the District Court must articulate
8 very sound and good reasons for denial of prejudgment interest
9 to an injured seamen. While defendants argued that the injured
10 seamen had waived his prejudgment interest, the 9th Circuit
11 disregarded this excuse, as it has most others, as not
12 constituting peculiar and exceptional circumstances as to avoid
13 the entering of prejudgment interest. Simeonoff, supra. The 9th
14 Circuit reiterated the rule in Vance v. American Hawaii Cruises
15 Inc., 789 Fed. 2nd 790 (1986), that the rational behind awarding
16 prejudgment interest in admiralty cases is to compensate the
17 wronged party for being deprived the monetary value of the loss
18 from the time of the loss to the payment of judgment. Turner v.
19 Japan Lines, Limited, 702 Fed. 2nd 752, 756 (9th Cir., 1983) The
20 court further states that the 9th Circuit recognizes and
21 approves the payment of prejudgment interest in admiralty,
22 unless peculiar circumstances are clearly delineated by the
23 district court and thus completely justify denial of prejudgment
24 interest. Vance, supra; Dillingham Shipyard v. Associated
25 Insulation Company, 649 Fed 2nd 1322 (9th Cir. 1981). The
26 District Court cannot fail to articulate sound peculiar and
27 exceptional circumstances for denying prejudgment interest, or
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2 else, the district court commits a clear abuse of discretion.
3 Edinburgh Assurance Company v. RL Burns Corporation, 669 Fed 2nd
4 1259 (9th Cir., 1982).

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6 As to computation of the interest rate to which maritime
7 lien holders are entitled, one of the leading cases is Western
8 Pacific Fisheries, Inc. v. S.S. President Grant, 730 Fed. 2nd
9 1280 (9th Cir., 1984) in which the 9th Circuit recognized that
10 prejudgment interest may be determined by the market value at
11 the time of injury, but noted that the better method for
12 determining prejudgment interest is to use the statutory rate
13 set for post-judgment interest. This method is both logical and
14 reasonable and renders a rate which is comparable to post-
15 judgment interest, except it must be calculated under the
16 variable interest rates of the U.S. Treasury bills during the
17 prejudgment interest period. In the MATOS and PRANJIC cases,
18 Robert Wallace, our economist, has utilized the post-judgment
19 interest method in determining the prejudgment interest except
20 that the rates are different because the prejudgment interest
21 period is not exactly the same as the post-judgment interest
22 period. Prejudgment interest which is set at a rate consistent
23 with federal statutes, 28 U.S.C. 1961, and considerably lower
24 than a market rate, could never be reasonably argued as
25 punitive, which is the primary concern of the 9th Circuit.
26 Dishman v. UNUM Life Insurance Co. of America, 269 Fed. 3rd 979
27 (9th Cir., 2001) In any regard, the prejudgment interest rates
28 utilized by Robert Wallace were determined using the "coupon

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2 issued yield equivalent of the average accepted auction price
3 for the last auction of 52 week U.S. Treasury bills settled
4 immediately prior to the date". Western Pacific Fisheries,
5 Inc., supra. There should be no dispute that the interest rates
6 utilized by Robert Wallace are reasonable and fair based on the
7 dictates of the 9th Circuit in determining prejudgment interest.
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10 **II.**

11 **MATOS and PRANJIC are entitled to post judgment**
12 **interest pursuant to 28 USC Section 1961.**

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14 Post-judgment interest on federal judgments are determined
15 by reference to a formula enacted by Congress at 28 U.S.C.
16 Section 1961. MATOS and PRANJIC are entitled to post judgment
17 interest from the date of the judgment until each judgment is
18 specifically satisfied. Robert Wallace, our economist, has
19 calculated the appropriate rate based on that formula and
20 submitted his report that verifies the amount of post judgment
21 interest to which both MATOS and PRANJIC are entitled.

22 (Affidavit of Dwight Ritter; Ex.8)

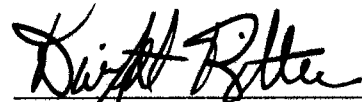
23 In summary, plaintiff MATOS and PRANJIC are entitled to
24 entry of a judgment reflecting both prejudgment and post-
25 judgment interest up to and including October 1, 2006. A
26 judgment should be entered as follows:

27 1. Judgment in favor ROBERT MATOS in the amount
28 \$ 621,515,00.00 with accrued prejudgment interest up to and

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2 including October 1, 2006 in the amount of \$ 235,045.00, and
3 post-judgment interest accrued in the amount of \$ 361,191.00 up
4 to and including the date of October 1, 2006, for a total MATOS
5 judgment of \$ 1,217,751.00.

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7 2. Judgment in favor of SLOBODAN PRANJIC in the amount
8 of \$ 577,421.00, with accrued prejudgment interest up to and
9 including October 1, 2006 in the amount of \$ 238,129.00, and
10 post judgment interest accrued in the amount of \$ 334,893.00 up
11 to and including the date of October 1, 2006, for a total
12 PRANJIC judgment of \$ 1,150,443.00.

13 Dated: 10/9/06, 2006



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ROBERT MATOS and
SLOBODAN PRANJIC